

REMARKS

These Amendments and Remarks are filed in response to the Office Action dated February 3, 2009. For the following reasons this application should be allowed and the case passed to issue. No new matter is introduced by this amendment. The amendments to claims 1, 16, and 27 are supported by previously presented claim 9. Claim 10 is amended to correct an informality.

Claims 1-8 and 10-17 are pending in this application. Claims 1-17 have been rejected. Claims 1, 10, 16, and 17 are amended in this response. Claim 9 is canceled in this response.

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 2, 5, 7, 8, 11, 12, and 14-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Yoshizawa et al. (US 2003/0162063). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested.

Yoshizawa et al. do not anticipate the claimed fuel cell system and method of protecting a fuel cell system because Yoshizawa et al. do not disclose a controller functioning to correct the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and perform the protection mode selection again based on the corrected restart time, as required by claim 1; correcting the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and performing the protection mode selection again based on the corrected restart time, as required by claim 16; and means for correcting the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and means for performing the protection mode selection again based on the corrected restart time, as required by claim 17.

The Examiner implicitly recognized that Yoshizawa et al. do not anticipate amended claims 1, 16, and 17, as the amendments to these claims are supported by previously presented claim 9, and claim 9 was not rejected as anticipated by Yoshizawa et al. Applicant further submits that Yoshizawa et al. do not suggest the claimed fuel cell systems and method.

Claim Rejections Under 35 U.S.C. § 103(a)

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshizawa et al. in view of Schwoegler (US 2001/0030624).

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshizawa et al. in view of Ito et al. (US 4,513,808).

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshizawa et al. in view of Bullock et al. (US 2003/0082426).

These rejections are traversed, and reconsideration and withdrawal thereof respectfully requested.

The combination of Yoshizawa et al., Schwoegler, Ito et al., and Bullock et al. do not suggest the claimed fuel cell system because Schwoegler, Ito et al., and Bullock et al. do not cure the deficiencies of Yoshizawa et al. Schwoegler, Ito et al., and Bullock et al. do not disclose a controller functioning to correct the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and perform the protection mode selection again based on the corrected restart time, as required by claim 1.

The Examiner implicitly recognized that the combination of Yoshizawa et al. with Schwoegler, Ito et al., or Bullock et al. do not suggest amended claim 1, as the amendment to this claim is supported by previously presented claim 9, and claim 9 was not rejected as obvious in view of Yoshizawa et al. and Schwoegler, Ito et al., or Bullock et al.

Obviousness Type Double Patenting

Claims 1-17 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Pat. No. 6,955,861 (the '861 patent). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested.

The claims of the '861 patent do not suggest the claimed fuel cell systems and method because the claims of the '861 patent do not suggest a controller functioning to correct the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and perform the protection mode selection again based on the corrected restart time, as required by claim 1; correcting the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and performing the protection mode selection again based on the corrected restart time, as required by claim 16; and means for correcting the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and means for performing the protection mode selection again based on the corrected restart time, as required by claim 17.

If the Examiner maintains the obviousness-type double patenting rejection, it is requested the Examiner explain with specificity where the claims of the '861 patent teach a controller functioning to correct the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and perform the protection mode selection again based on the corrected restart time, as required by claim 1; correcting the estimated restart time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and performing the protection mode selection again based on the corrected restart time, as required by claim 16; and means for correcting the estimated restart

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time when the fuel cell is not restarted although a predetermined time after the estimated restart time has elapsed, and means for performing the protection mode selection again based on the corrected restart time, as required by claim 17.

In view of the above amendments and remarks, Applicant submits that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Bernard P. Codd

Registration No. 46,429

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 BPC:MWE
Facsimile: 202.756.8087
Date: June 3, 2009

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